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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1946

No. 910

JANE V. BUCKNER and LEON BUCKNER
Petitioners,

vs.

FRED A. TWEED, trading as F. A. TWEED COMPANY
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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WILSON - EPES PRINTING CO. - RE 6003 - WASHINGTON 1, D. C.

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OPINION BELOW

This case was heard first in the trial Court July 9, 1943, and resulted in favor of petitioners; from there, it was taken by appeal to Municipal Court of Appeals and decision was reversed with instructions to grant a new trial; case was heard in trial Court again, findings for respondent; and in the second appeal to the Municipal Court of

Appeals, the trial Court's decision was affirmed; from there it was appealed to United States Court of Appeals and the judgment of the Municipal Court was affirmed; petition for Rehearing was denied Oct. 21, 1946.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Acts as follows:—Feb. 13, 1925, ch. 229, Section 1, 43 Stat. 938; Jan. 31, 1928, ch. 14, Section 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926.

QUESTIONS PRESENTED

1. The question is whether the terms in an ordinary contract for the sale of real estate, providing for cash payment and the amount and character of the deed of trust to secure the balance of the purchase price, become a matter of form only, and are these terms merely a statement of what the purchaser can do, and not a condition that can be insisted upon by the owner. In other words are these essential terms in a sales contract a statement of a privilege only and can the purchaser at will increase the cash payment, lower the amount of the deed of trust, without the consent of the other party to the agreement and even against his wishes. Can the purchaser vary the terms of his contract of sale without the consent of the owner merely by showing that the terms of the altered contract are more advantageous to the owner.

2. The question is whether the sales contract was a valid and enforceable and whether an invalid contract would even give respondent an employment contract, and is not in violation of Rights of Persons—Due Process Law Clause of the 5th Amendment to the Constitution of the United States.

3. Whether the question regarding the District Court of Appeals in supplying the words "material deviation" instead of "identical terms" as used in case referred to was not to be regarded as overruling the *Heurich v. Sullivan* case, 52 App. D. C. 95, without saying so, and whether this was not going beyond the judicial prerogatives of that Court by in effect repealing that law, and is this not in violation of the Judicial Power under Article III of the Constitution of the United States.

4. Whether in the argument for Rehearing which the United States Court of Appeals denied in reference to questions not anticipated before such decision affirming judgment of Municipal Court were received was not in violation of the "Right to be Heard" under the Procedural Due Process Law under the provision of the 5th Amendment to the Constitution of the United States as to such questions as follows: (a) the validity of a contract, (b) applying the words "material deviation" to the *Heurich* v. *Sullivan* case, (c) a broker being able to explain to a potential purchaser the advantages of a too-high-first-trust written into a contract, (d) beneficial results of a remedy suggested that might appear that way to other parties other than all parties to a contract, (e) that a breach by a purchaser should not necessarily entitle the purchaser to special considerations.

5. Whether in requesting a Clarification which was denied, such questions raised by the United States Court of Appeals that required further explanation of the terms used in the decision was not also in violation of the Procedural Due Process Law of the 5th Amendment to the Constitution of the United States. Such questions that were earnestly requested explanations were as follows: (a) an agent being able to collect a commission when there is no binding contract between purchaser and seller, (b) in what way does the "letter of instruction" that was intended merely to postpone the settlement date subtract

or enlarge the terms of the alleged contract of April 18, 1943; (c) when does a binding statement in a contract become a privilege and not a condition, (d) was there any evidence produced to show purchaser was ready, and able to carry out the terms of either the original contract or the substitute plan of financing.

6. Whether the question of granting purchaser having a second trust made to another party other than the petitioners which was on deposit with the Title Company, and considering such trust as money was not together with questions under the following number of questions designated 7 and 8 against Equal Protection Clause under Rights of Citizens as guaranteed under the 14th Amendment to the Constitution of the United States.

7. Whether a too-high-first-trust as explained (Appdx. 23) placed into a contract allowing purchaser to claim he has not ample funds with a smaller first trust would in most cases allow the purchaser to withdraw from the sale to the detriment of those relying on such a sales contract was not also against public policy.

8. Whether the question of mutuality of a contract is not required in order to maintain a suit for damages.

SUMMARY STATEMENT OF MATTER INVOLVED

This case was heard in the United States Court of Appeals for the District of Columbia and is based upon a commission of $847.50 on an alleged contract of sale. This is a suit to prevent respondent from collecting a commission on an alleged contract of sale in which no sale had been consummated, the property involved in this case at that time is situated at 5439 42nd St. N. W., Washington, D. C., which property was then owned throughout the year, 1943 by one of the petitioners. The property was first listed for sale January 24, 1943 for $19,500.00, which contract of employment expired nearly two months previously to when the alleged contract of sales was signed by

purchaser and petitioners on a Sunday of April 18, 1943. No other written agreement of employment was in force at the time the alleged contract of sales was signed by petitioners.

The petitioners signed an alleged sales contract that had previously been signed by a potential purchaser of said property with a selling price and terms stated therein. The sale failed to be consummated and respondent resorted to litigation to collect commission on the alleged sales contract.

On April 18, 1943, respondent submitted an offer in triplicate from purchaser for $16,950.00, terms $3,500.00 cash, purchaser "to place" an $11,000.00 first trust, balance to be secured by a second trust for $2450.00 payable $48.00 per month. This second trust to be made to one of petitioners. At that time the property was subject to a deed of trust for $9,500.00, upon which there was a balance aggregating $6,100.00 payable monthly at the rate of $62.50. There was also a provision in the deed of trust limiting the amount of payment in any one year. The cost of prepaying first trust was approximately between $700.00 and $800.00. After some discussion, defendants agreed to accept the offer, providing they were assured that they would not be required to bear any expense in obtaining a release of this trust. They required a provision to this effect, which respondent wrote on the back of the offer, as follows:

> "It is understood that the sellers are not to pay any bonus—or penalty to pay off loan—on the existing first deed of trust to The Evening Star or holder of the said deed of trust. This the 18th day of April 1943
>
> F. A. Tweed Co.
> (s) F. A. Tweed"

Thereupon the petitioners signed the form of contract as thus modified. After having secured the petitioners'

signatures, respondent through one of his representatives, called on the potential purchaser, the next day which was Monday and obtained his consent to add to the proposed agreement, above the signatures of the purchaser and petitioners the following language:

> "4/19/43 Purchaser agrees to pay not over $43.00 bonus to pay off existing first trust. H. J. K."

This modification of the proposed agreement was not submitted to, or approved by the Appellants. (Appdx. 30)

The endorsement on the back of the proposed agreement made at the instance of petitioners was not placed on the proposed purchaser's copy and was never approved in writing by him, respondent claimed he consented verbally to the modification but purchaser denied this, indicating his belief that the endorsement had nothing to do with him personally (Appdx. 20)

Sundry efforts were made to complete the sale. These failed, however, because the existing first trust was not released (Appdx. 16) thereby making it impossible to place a new first trust for $11,000.00; the respondent requested petitioners to pay to obtain release of that trust. (Appdx. 17) Each had what purported to be a copy of the contract, but the provisions in copy of purchaser differed with the one held by petitioners.

Respondent conferred with Saul Company and with an official of the Evening Star Company and learned that they desired to hold the loan and would increase the loan to $9,500.00 but would not increase the loan to $11,000.00 as stipulated in the terms of the contract. Further they would not accept $1,500.00 from purchaser and write down the amount as a $11,000.00 trust and immediately give credit of $1,500.00 as payment on same. With the $3,500.00 second trust made to brother of purchaser this extra amount of money could have been furnished by purchaser; but, that

would not have given the petitioners a second trust made to one of the petitioners for $2450.00.

Petitioners were notified by registered mail by purchaser through respondent that a settlement meeting would be held on May 6, 1943, and that everything would be ready for settlement, but when petitioners arrived at the Title Company, the second trust for $2450.00 had not been even ordered (Appdx. 16) but instead a second trust for $3,500.00 made to brother of purchaser was on deposit with the Title Company to take care of an all cash proposition but the contract did not call for an all cash deal. So purchaser was not ready to consummate the sale and breeched the contract on May 6th, 1943, but petitioners waived that breach by postponing the settlement until May 18th, 1943. (R. 75) by depositing a signed deed and a letter of instruction. On May 12th, one of petitioners withdrew the signed deed but he had it with him at the May 18th settlement meeting. (Appdx. 27)

At the May 6th, 1943 settlement meeting there was a first trust on deposit for $9,500.00 from the holder of the then existing trust, and one for $10,500.00 from the bank of the purchaser, but no $11,000.00 first trust was on deposit or a second trust made to one of petitioners for $2450.00. Respondent proposed a substitute plan of financing with a $9,500.00 first trust but that was not in accordance to the terms of the alleged contract and further purchaser did not propose that substitute plan of financing with a second trust to be made to one of petitioners.

At the May 18th, 1943 settlement meeting the purchaser had obtained a $11,000.00 first trust from a different source than the holder of the petitioner's trust and had a $2450.00 second trust made to one of petitioners and cash $3,500.00. But as the then existing trust could not be released without paying interest to maturity and as no one offered to pay to obtain a release of that trust, the $11,000.00 first trust could not be placed. And further the purchaser

never had on deposit with the Title Company $5,000.00 in checks or cash (Appdx. 18); so, that the deal could not have been closed according to the substitute plan as suggested by respondent on May 6th, 1943.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The decision of the United States Court of Appeals involves "important questions of Federal law which has not been but should be settled by this Court.

2. The United States Court of Appeals has decided Federal questions in a way probably in conflict with the Supreme Court on cases relied upon.

3. The United States Court of Appeals has decided a Federal question by supplying words to a particular case relied upon probably in a way not applicable to Supreme Court decisions.

4. The decision of the United States Court of Appeals in not answering vital questions pertaining to the instant case or clearly explaining certain construction of the lower Court's decision in a way probably not in accordance to applicable decisions of this Court.

5. The decisions of the United States Court of Appeals in not weighing properly Federal questions as to their importance to the general public in a way probably in conflict with Supreme Court decisions.

6. The United States Court of Appeals has decided a question in relation to the obligation of a contract by construing a condition in a contract to be a privilege granted to one party in the contract, and in this way decided a Federal question probably in a manner which has not been but should be settled by this Court.

ARGUMENT

I

The Decision of the Court below in deciding a question in relation to the terms of a contract has supplied words in explanation of such terms that affect the contract itself that has not been but should be settled by this Court.

In reference to the terms of the contract, the United States Court of Appeals in their decision on page 3, stated as follows:

> "In purpose and therefore in effect, it was not a condition upon which appellants insisted but a privilege which they allowed the purchaser."

The above quotation in reference to the $11,000.00 first trust as stipulated in the alleged contract of sale. It does not seem reasonable to arrive at such conclusions when the terms of an ordinary contract expresses an obligation.

In *Bedford* v. *Easter Bldg. & Law Assoc.,* 181 U. S. 227, 21 Sup. Ct. Rep. 597, The Court said:

> "The obligation of a contract is the law which binds a party to perform their agreement."

In another case it explains in general the effect of changing terms of a contract. In *Ogden* v. *Saunders,* 25 U. S. 213, 12 Wheat 213, 6 L. Ed. 606, Justice Washington is quoted as saying:

> "A law affecting the validity, the construction, the duration, the mode of discharge or evidence of agreement impairs the contract."

It seems to be a possibility that under decisions in common law the respondent and petitioners would have been protected in executing the contract but that now through retrospective decision of the lower Court they are deprived in making such contracts with certainty as to its terms as

stipulated therein; such a decision depriving petitioners to make contracts of their own choosing which persons had the right to do and probably still have that right in other jurisdictions; and, which persons in other lines of business may make and that it therefore deprives them of the equal protection of the laws, and that in these respects it violates the provision of the 14th Amendment of the Federal Constitution.

If the alleged contract was valid after the following legal day and after the notation written above petitioners' names was added thereto without petitioners' consent then the following case might apply. In *Havemeyer* v. *Iowa County,* 3 Wall 294, The Court said:

> "If a contract, when made was valid by the Consituation and laws of the state as then expounded by the highest state authorities, no subsequent action by the state legislature or judiciary can impair its obligation."

In another case in reference to an established law, the Court in *Larned* v. *Burlington,* 4 Wall 275, said:

> "The obligation of a contract valid by the laws of the state at the time it was entered into by the parties, cannot be impaired by a subsequent act of the legislature or by a decision of the courts."

If the lower Courts decision in stating that the terms as stipulated in the contract are not a condition but a privilege, then it is obvious the difficulty that will be faced in discerning those terms in a contract that are not binding conditions and those that are only a privilege which can be changed by the will of one party to the contract without the consent of the other party thereto.

Such a decision as to the instability of the terms of a contract probably violates the right of parties to make their own contracts—a right guaranteed by the 5th Amendment to the Constitution of the United States under the Due Process Law.

In the case of *Dartmouth College* v. *Woodward*, 4 Wheat 518, The Court said:

> "All contracts which concern property or some object of value, and confer rights which may be asserted in a Court of justice, are within the constitutional provision against laws impairing the obligation thereof."

The right to dispose of property at a price as agreed upon by the parties to a contract is guaranteed by the constitution. In *Tyson & Bros.* v. *Benton*, 273 U. S. 418, 47 Sup. Ct. Rep. 426, The Court said:

> "The right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself, and as such within the protection of the due process clause of the Federal Constitution."

Parties being hindered by judicial decisions to express binding terms on which agreement is reached as to those terms to dispose of their property is unconstitutional and void; and to impose obstructions from being able to adhere to strict compliance of the terms by one of the parties to the contract is probably not within the scope of the judicial power under common law procedure.

As such decisions are of a discriminating character which results in arbitrary restriction upon the fundamental right of citizens to control his or her own choosing as set forth in contracts.

But, if by such decisions, citizens have lost the capacity to make contract and thus lose property rights protected by the Due Process Law of the 5th Amendment, it is thus in violation of the Federal Constitution. The right of every individual must stand or fall by same rule of law that governs every other member of the body politic or land under similar circumstances; and every Court decision that might be construed contrary to such laws which propose

to destroy or affect individual rights or does the same thing by affording remedies leading to similar consequences is unconstitutional and void.

The privilege of contracting is both a liberty and a property right and it is probably clear to this Court that he is deprived of both liberty and property to the extent that terms on which he contracts to sell his property are not binding conditions but a privilege that can be changed by the arbitrary rule of the judiciary in common law proceedings.

II

The United States Court of Appeals has referred to a number of cases which in a way probably this Court will not find applicable to this instant case.

The line of cases under note 2, page 3, of the decision present a variety of cases, first two of which refer to enrichment cases involving part performance. In this instant case no benefits accrued the petitioners by the part payment of purchaser. In another a written offer was submitted and vendor would not sign contract. In this instant case petitioners signed an alleged contract and no other contract was presented to petitioners for their signatures. In another a change of attorney was an excuse. Such an excuse was not presented in this case at bar for consideration. In the last case cited under note 2, a written offer was submitted in accordance with the terms of the oral listment but vendor refused to sign contract, but on the other hand the Court, in this case said:

> "In order for the broker's commission to be earned, the offer of a seller must be accepted by the purchaser unequivocally, unconditionally, and without variance of any sort."

In the case cited under note 3, of the decision of the lower Court, the vendor in the case sold the property to

another after being offered a good price. In this instant case petitioners didn't sell for over one year later and then through a brokerage concern; further petitioners were ready to settle and had the signed deed on deposit and surely the deal could have been consummated on that very day of May 6th, 1943; and, at the next settlement meeting one of the petitioners had the signed deed with him ready for settlement had purchaser made tender according to the stipulations in the contract or even according to the substitute plan of financing, but at neither settlement meeting was a tender made sufficient to consummate the sale, unless someone would have secured release of the then existing trust.

In the Restatement of the Law of Agency, section 445d cited under note 4 in decision of lower Court it seems if any analogy is to be drawn from that section it follows respondent is not entitled to a commission.

Under note 5, the arguments advanced under these references do not seem to be in harmony with the instant case.

Under note 6, cited in decision of the lower Court, this case in Equity, does not seem applicable to this instant case before this Honorable Court.

In reference to note 1, regarding the *Heurich* v. *Sullivan* case, this case will be explained more fully in the following paragraph:

III

The decision of the United States Court of Appeals based its decision on the purchaser's ability to change the cash payment and amount of the first trust without the consent of petitioners by supplying the words "material deviation" to the Heurich v. Sullivan case.

The District Court of Appeals based its decision regarding the substitute plan of financing on the *Heurich* v. *Sullivan case*, 52 App. D. C. 95, 281 Fed. 591, which seems to be the controlling case, and it was also mentioned by petitioners and probably in a number of ways will not be found at variance to the instant case. But in order to refer to the *Heurich* v. *Sullivan* case the lower Court supplied the words "material deviation" to that case and in doing so antedated their decision by reference to above cited case, which is in fact repealing that law, which is against the prerogatives of the lower Court as it is in violation of the Judicial Power of Article *III* of the Constitution of the United States in such matters. For, had the lower Court used the words "identical terms" as appeared in that case it would have been rather difficult to apply those terms to the statement made in the decision of the lower Court that the substitute plan was better for the petitioners than the terms stated in the contract to which petitioners are not in agreement, but it is rather hard to conceive something better and still be "identical" and that is probably why "material deviation" was substituted. In the *Heurich* v. *Sullivan* case the Court quoting the case of *Crosthwaite* v. *Lebus,* 146 Ala. 525, 41 South 853, stated as follows:

> "A broker is not entitled to commission until he has performed the undertaking assumed by him. The right to compensation depends upon a performance of the stipulations and conditions of the contract of agency, and the broker must act strictly according to the authority conferred upon him by his principal."

As this is cited from a decision in another state, it indicates the national scope of such decision and how overruling that law will affect other jurisdictions.

To overrule a case with a well established precedent is not viewed with favor by this Honorable Court. Such cases are commonly called "doctrine of precedents" as found in *Johnson* v. *Western Union Tel. Co.*, 57 S. E. 122, 144 N. C. 410, 10 L R A NS 256, 119 An St. Rep 961.

In *Kirby* v. *Boyette*, et al, 118 N. C. 244, 24 S. E. 18, the Coourt said:

> "The Supreme Court will not disturb a rule of property announced 15 years before, and then declared to be but an affirmance laid down over 20 years prior thereto no matter what would be the view of such court where the matter before it res nova."

As to the power of Courts to repealing established laws. In the case of *Wood* v. *Brady*, 150 U. S. 18, 14 Sup. Ct. Rep. 6, this Court said:

> "Courts are bound in their very nature to declare what the law is and has been and not what it shall be in the future, and if they were absolutely bound by their prior decisions, they would be without the power to correct their own errors."

As regards property contracts, rules are binding under common law.

In the case of *Richards* v. *Washington Terminal Co.*, 233 U. S. 546, 34 Sup. Ct. Rep. 654, the Court said:

> "A doctrine that has become so well established as to amount to a rule of property should be modified if at all, only by the law making power."

In regards to reversing or overruling decisions as affecting prior rights. In the case of *Larned* v. *Burlington*, 4 Wall 275, and in *Olcott* v. *Fond du Luc County*, 16 Wall 678, it was stated:

"If a contract when made was valid under the Constitution and laws of a state as they had been previously expounded by its judicial tribunal, and as they were understood at the time, no subsequent change in the decisions of the state Courts will be followed to declare the contract invalid or destroy rights accrued under it. Such change in the state decisions can effect subsequent contracts only."

IV

The Letter of Instruction* was not self sufficient in itself nor did respondent secure authorization from petitioners to change copy of contract held by purchaser.

The United States Court of Appeals has apparently considered the 'Letter of Instruction" left with the signed deed and deposited with the Title Company as expressing the terms of settlement. While it is rather difficult to ascertain exactly the importance attached to the letter of instruction and therefore we can only explain that this "Letter of Instruction" did not contain the name of respondent or the consideration, and without mentioning a consideration no contract is valid, and as the consideration was not mentioned orally or otherwise it could hardly be considered self-sufficient and if it did any more than postpone by petitioners the settlement after they, the petitioners waived the breach of purchaser and this after time was made "of the essence of the contract" by a registered letter sent to the petitioners, it is difficult to understand. One of petitioners was asked by counsel of respondent as follows:

"So you sat down on that occasion on May 6th and agreed to postpone the settlement until May 18th?
Petitioner's reply,—That's true (R 173)

If the original alleged contract was invalid then the "Letter of Instruction" doesn't seem likely could have made it valid. In the case of *Swan vs. Scott,* 11 S & R 155, 164, the rule is stated thus:

*Letter of instruction on exhibit "A" with Clerk of Supreme Court.

> "The test, whether a demand connected with an illegal transaction is capable of being enforced at law is, whether the plaintiff required the aid of the illegal transaction, to establish his case."

If the words, "invalid contract" was substituted for the words "illegal transaction" it might apply to this case at bar.

In the last trial regarding the bonus for releasing the then existing trust, a great deal of time was consumed in reference to this bonus but it was not disclosed clearly that the then existing trust could have been released by the payment of a bonus and in reference to refusal to release trust was that it required interest to maturity to obtain that release and photostat copies of former testimonies in prior trials were submitted in argument for a Rehearing to explain the loan could be released by paying interest to maturity. In 12 Am. Jur. 954-957, sections 378 and 379, it explains the obligation of respondent under the alleged contract. In 13 C. J. page 591-592, it states that terms of a tripartite agreement cannot be modified to the detriment of one of the parties by the other two without his consent.

In 12 Am. Jur. Section 36, P 530, By Rejection,—"An offer is terminated by rejection and cannot thereafter be accepted so as to create a contract." A request for a change or modification of a proposed contract, made before an acceptance thereof, amounts to a rejection of it. But a mere inquiry as to whether the proposer of a contract will alter its terms, made before acceptance or rejection, does not amount to a rejection, and if the offer is not withdrawn before acceptance within a reasonable time, the offer becomes a binding contract. A qualified acceptance is a counter offer which rejects the original offer.

In the instant case petitioners accepted the offer only under condition of the notation written on back of their contract by respondent and the release of the then exist-

ing trust was that condition and respondent never fulfilled that condition. And now the question arises did the "Letter of Instruction" incomplete in itself and depending upon the alleged contract sufficient to disregard the notation regarding the release of the then existing trust and was this the basis of considering the alleged contract met by the purchaser? Among other questions requested to be clarified was this question regarding the importance attached to the "Letter of Instruction" that was deposited with the signed Deed with the Title Company on May 6, 1943. But clarification was denied by the United States Court of Appeals.

In attaching more importance to a "Letter of Instruction" than is due such paper writing as has probably been the aim of the lower Court is placing more importance upon such merely postponing privileges granted a purchaser than has been heretofore given such paper writing and as such has jeopardized the interest of the petitioners which is in violation of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

V

A too-high-first-trust written into a contract and other irregularities are against public policy and violates the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

When a purchaser is induced to sign a contract by explaining to him by the broker, that he, the potential purchaser can withdraw from such a sale on account of a too-high-first-trust written into a contract. (Appdx. 23) And this remark concerning such matter had been brought to the attention of all present at the May 6, 1943, settlement meeting and repeated at every trial, and never denied by the purchaser of having made such a statement.

It can be understood how a purchaser by explaining that he cannot secure such a trust or that he has not ample funds to purchase the property with a smaller first trust, that with such an explanation given the vendor, a purchaser could in practically every case withdraw from the sale without any trouble providing the broker would not be antagonistic. But suppose the trick is now turned on the unwary potential purchaser, who is only partly interested, as in the former example, and he signs a contract under similar conditions but instead of being allowed to easily withdraw he is threatened by a suit and is told by the broker that he, the broker didn't know the vendor would be so persistent; and then the potential purchaser finds he has to pay money to get out of the trouble, or else consummate the sale according to the terms of the contract. Such methods harmful to the general public should not be encouraged by the Courts by allowing a written contract signed by purchaser and vendor to be changed as to the terms stated therein.

To allow one party to a contract to withdraw and holding the other party to be strictly accountable to the same contract and then allowing the broker to probably make the contract unenforceable by having the purchaser's copy reading differently than petitioner's alleged contract is violating the Equal Protection Clause of the 14th Amendment to the Constitution.

And, with the decision of the United States Court of Appeals allowing the amount of the first trust and cash payment to be changed because it is not a condition but a privilege which was allowed the purchaser—this will allow the terms of a contract to be changed by the Courts to the detriment of those entering into contractual arrangements, and it will increase litigation in the Courts to a much greater degree than it is at the present time.

For one party to be given the idea that he can withdraw from the contract and not the other party given that

same opportunity is against the Equal Protection Clause of the 14th Amendment to the Constitution of the United States. Such contracts are against public policy and in the case of *Muller* v. *Hoffman*, 174, U. S. 639, 19 Supt. Ct. Rep. 839, the Court said:

> "In all cases where contracts are claimed to be void as against public policy, it matters not that any particular contract is free from any taint of actual fraud, oppression of corruption, for the law looks to the general tendency, and the vice is in the very nature of the contract itself."

In order to make a valid contract the parties thereto must agree to the terms stipulated therein. In the case of *Brown* v. *Mason*, 155 Cal. 155, 98 P. 867, 21 L R A NS 328. The Court stated:

> "The duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale, and the price and terms on which it is to be made, and until this is done his right to commissions does not accrue."

The Court in commenting on the above quotation cited Sibbald v. Bethlehem Iron Co., 83 N. Y. 382, 38 Am. Rep. 441, which case also referred to Koch v. Emmerling, 22 How. (U. S. 72) and others.

CONCLUSION

These essential elements of rights of the citizens to contract in reference to lawful business transaction in which he may desire to engage which is guaranteed by the Constitution of the United States and is supported by common law which we have pointed, namely, (1) the right of the parties to contract, (2) to agree upon certain terms as stipulated into the contract, (3) to rely upon those terms as the basis for negotiation for final settlement, and these are manifestly so inseparately connected with each

other that the destruction or abridgement of one is the negation of the whole of said right to contract, and therefor any decision that wholly or partially destroys one of these elements is unconstitutional and must necessarily apply to and control all, as to this constitutionality of the others. In view of the important federal questions presented and of other questions referred to, the case is an appropriate one for review by this Court.

Respectfully submitted,

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